



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

March 18, 1996

Mr. Ron M. Pigott
Assistant General Counsel
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR96-0348

Dear Mr. Pigott:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 38388.

The Texas Department of Public Safety ("DPS") received a request for information concerning the Texas Ranger investigation at the Branch Davidian Compound in Waco, Texas. Specifically, the requestor seeks the following information:

1. the investigation report;
2. the name of the Ranger who prepared the report;
3. the name of the Rangers who interviewed witnesses or who participated in the investigation;
4. a list of the witnesses interviewed during the investigation;
5. a list of the physical evidence examined by the Rangers; and
6. any memoranda or correspondence of the Rangers regarding the investigation.

You contend that the requested information is excepted from required public disclosure under sections 552.103 and 552.108 of the Government Code.

You state that on December 15, 1995, the DPS submitted a similar request to this office for consideration. You ask that we incorporate the arguments presented in your

December 15 correspondence with the request at issue. You also contend that "[a]ll aspects of the Branch Davidian matter are still in litigation" and that "[t]he main case against the Branch Davidians is under appeal."

This office issued Open Records Letter No. 96-0099 in response to your December 15, 1995, request stating that

This office has previously ruled on the availability of all or portions of the requested information in Open Records Letter Nos. 93-118 (1993), 93-697 (1993), and 93-712 (1993). In those rulings, we concluded that the department could withhold the report under section 552.108 because it related to criminal prosecutions pending in federal court. We understand that the case is on appeal and that oral arguments were scheduled to start January 4, 1996. Accordingly, the information relates to criminal proceedings and may be withheld under section 552.108 *in accordance with our previous rulings.*

Although the previous rulings upheld your section 552.108 assertions, as noted in Open Records Letter Nos. 93-118 (1993) and 93-712 (1993), section 552.108 does not except information normally found on the first page of an offense report. *See Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976).

The information requested in item 2, the name of the Ranger who wrote the report, and item 3, the names of the Rangers who interviewed witnesses or participated in the investigation, is the type of information specifically deemed public by the *Houston Chronicle Publishing Co.* case. As indicated in the previous rulings, you may not withhold this information under section 552.108 of the Government Code.

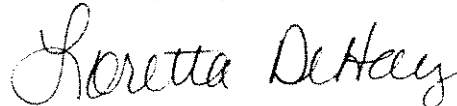
You claim that the names of the Rangers who wrote reports and participated in the investigation are contained on the reports themselves. You contend that there are no independent lists of this information outside of the reports. Moreover, you claim that the DPS is not in control or possession of the reports.

Although the Open Records Act does not require that a governmental body create new information, Open Records Decision Nos. 605 (1992), 572 (1990), 558 (1990), section 552.231 of the Government Code does require that a governmental body program or manipulate data in order to respond to a request. If the governmental body determines that responding to a request that requires programming or manipulation of data is not feasible or will result in substantial interference with the operations of the governmental body or that the cost of the programming and manipulation of data must be covered, the governmental body is required to notify the requestor. Gov't Code § 552.231(a)-(c). We assume that the DPS is in possession of data that contains the names of the Rangers at

issue. Accordingly, the DPS must provide a list of the names of the Rangers or comply with the requirements of section 552.231 concerning the programming and manipulation of data.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Loretta R. DeHay
Assistant Attorney General
Open Records Division

LRD/LBC/ch

Ref: ID# 38388

Enclosures: Open Records Letter Nos. 93-118, 93-697, 93-712

cc: Mr. Scott Pendleton
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(w/o enclosures)